

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

In the Matter of the Adoption of the)
)
CRIMINAL JUSTICE ACT PLAN)
)
(And Rescinding General Order No. 73;) **GENERAL ORDER NO. 134**
General Order No. 21 (amended by)
General Order No. 73); and)
General Order No. 88 (amending)
General Order No. 73)).)
_____)

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judicial Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the District of Idaho, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of Title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this District.

B. Compliances.

1. The Court, its Clerk, the Community Defender Organization, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys and attorneys employed by the Federal Defenders of Eastern Washington and Idaho.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of Title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;

- h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of Title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge or United States Magistrate Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of Title 28, United States Code;
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States Attorney for processing under a pretrial diversion program;
 - f. is held for international extradition under chapter 209 of Title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. In a capital case, upon the request of the defendant, at least two attorneys should be appointed.
2. Qualifications. Except as provided by section 848(q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in sections 848(q)(5) and (6) of Title 21, United States Code. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause may appoint another attorney who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation. Pursuant to section 3005 of Title 18, United States Code, at least one attorney shall be learned in the law of capital cases. In assigning counsel in capital cases, the court shall consider the recommendation of the Community Defender Organization.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

V. COMMUNITY DEFENDER ORGANIZATION

A. Organization.

1. Federal Defenders of Eastern Washington and Idaho, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Community Defender Organization for this District.
2. The Community Defender Organization shall be capable of providing legal services throughout the District.

- B. Supervision of Defender Organization. The Executive Director of Federal Defenders of Eastern Washington and Idaho shall be responsible for the supervision and management of the Community Defender Organization. Federal Defenders of Eastern Washington and Idaho shall be appointed in all cases assigned to that Organization for subsequent assignment of staff attorneys at the discretion of the Organization.

VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. “Substantial” shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the District.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

- A. Appointment of Counsel. The Court shall appoint the Capital Habeas Unit of Federal Defenders of Eastern Washington and Idaho as lead counsel to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of Title 28, United States Code. Upon request of the Capital Habeas Unit, the Court shall also appoint an attorney from the capital habeas panel as second counsel. In the event of conflicts, existing workload, or other special factors, the Capital Habeas Unit is unable to provide representation it shall recommend to the Court that attorneys from the CJA Capital Habeas Panel be appointed pursuant to section 848(q) of Title 21, United States Code, or other applicable provisions of law.
- B. Administration of CJA Capital Habeas Panel. The Capital Habeas Unit shall prepare a list of private attorneys qualified and willing to accept appointments in death habeas cases. The list of attorneys, along with a summary of their qualifications, will then be forwarded to the Court for final approval and placement of the private attorneys in a first or second chair position for subsequent appointment. All death penalty defendants requesting

appointment of counsel will initially be assigned by the Court to the Capital Habeas Unit. If the Capital Habeas Unit determines that the organization cannot accept the appointment because of a conflict of interest, caseload already assigned to staff attorneys, or for any other valid reason, a first and second chair attorney from the panel shall be recommended for appointment by the Capital Habeas Unit. The Court can either accept the recommendation or select other attorneys from the list.

CJA attorneys will submit the original of all partial and final CJA vouchers directly to the Court with a copy being provided to the Capital Habeas Unit. The Capital Habeas Unit will conduct an initial review of all partial and final CJA vouchers and investigative expenses by attorneys within ten (10) days of receiving the voucher and submit a recommendation to the Court as to disposition. The Court retains final approval authority over all vouchers and requests for investigative services.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct and the Idaho Rules of Professional Conduct.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by Circuit Rule 4-1), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Probation officers and pretrial services officers in this District, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Defendants of Eastern Washington and Idaho which shall discuss with the person the right to

representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge or judge of this Court for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142, *et seq.*, prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the Clerk of Court or, in capital habeas cases, to the Capital Habeas Unit of Federal Defenders of Eastern Washington and Idaho. That office shall review the claimform for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim for the consideration of the appropriate judge or magistrate judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Ninth Circuit.

APPENDICES:

- I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

DATED this 13th day of March, 1997.

EDWARD J. LODGE
Chief United States District
B. LYNN WINMILL
Judge United States District Judge
MIKEL H. WILLIAMS
Chief United States Magistrate Judge
LARRY M. BOYLE
United States Magistrate Judge

AMENDED APPENDIX I (May 8, 2006)

**PLAN FOR THE
COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT¹**

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panel.

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the Panel after receiving recommendations from the “Panel Selection Committee,” established pursuant to Paragraph B of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Divisions. The District of Idaho shall be divided into three divisions for the purpose of this Plan and there shall be a separate roster of attorneys for each division within the CJA Panel. The counties included in the divisions are as follows:

Southern Division:

| | | |
|--------|---------|------------|
| Ada | | |
| Adams | Elmore | Owyhee |
| Blaine | Gem | Payette |
| Boise | Gooding | Twin Falls |
| Camas | Jerome | Valley |
| Canyon | Lincoln | Washington |

Northern /Central Divisions:

| | |
|------------|-----------|
| Benewah | Kootenai |
| Bonner | Latah |
| Boundary | Lewis |
| Clearwater | Nez Perce |
| Idaho | Shoshone |

¹ This Appendix applies to the administration of the CJA Panel for all criminal proceedings except those cases where counsel is appointed under 21 U.S.C. § 848(q). The administration of CJA Capital Habeas Panel is governed by Part VII of this CJA Plan.

Eastern Division:

| | | |
|------------|-----------|----------|
| Bannock | Clark | Madison |
| Bear Lake | Custer | Oneida |
| Bingham | Franklin | Power |
| Bonneville | Fremont | Teton |
| Butte | Jefferson | Cassia |
| Caribou | Lemhi | Minidoka |

3. Size. The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
4. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, have been admitted to practice for at least three years, and be a registered ECF participant.
5. Continuing Legal Education. Attorneys who serve on the CJA Panel are expected to have eight (8) hours of continuing legal education in criminal and constitutional law areas every two years.
6. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
7. Application. Application forms for membership on the CJA Panel shall be obtained from the Court's website at: www.id.uscourts.gov, under Attorney Resources / CJA. Completed applications shall be submitted via e-mail to the Clerk of Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. Panel Selection Committee.

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate judge, at least one attorney, and the Executive Director of Federal Defenders or a designated representative. The Committee shall be chaired by the district judge.

2. Duties.

- a. The Panel Selection Committee shall meet at least once a year to consider applications from attorneys to be on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, the best qualified applicants.

At its annual meeting, the Committee shall also review the operation and administration of the Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and Panel management. The Committee shall also inquire annually as to the continued availability and willingness of each Panel member to accept appointments.

- b. If at any time during the course of a year the number of vacancies due to resignation, removal, or death, significantly decreases the size of the Panel, the Committee shall convene a special meeting to review the qualifications of the pending applicants, and select prospective members for recommendation to the Court for approval.
- c. When the Committee submits the names of applicants for Panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. of this Model Plan. At least once each year the Committee shall provide the Court with information on the Panel of attorneys in each of the categories listed in Paragraph I.A.4. of this Model Plan.

C. CJA Training Panel.

The Panel Selection Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a “second chair” capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

A. Maintenance of List and Distribution of Appointments

The Clerk of Court shall maintain a current list of all attorneys appointed to the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each district judge and magistrate judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Community Defender Organization and private attorneys, according to the formula described in the CJA Plan for the District.

B. Method of Selection.

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant. Attorneys who, in the opinion of the Court, consistently refuse to accept cases when it would otherwise be their turn for an appointment, shall be removed from the list.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances.

Upon the determination of a need for the appointment of counsel, the district judge or magistrate judge shall notify the Clerk of Court of the need for counsel and the nature of the case.

The Clerk of Court shall advise the district judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Community Defender Organization and the Panel of private attorneys. If the magistrate judge or district judge decides to appoint an attorney from the Panel, the Clerk shall determine the name of the next Panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name of the

appointing district judge or magistrate judge. In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing district judge or magistrate judge shall notify the Clerk of Court as to the name of the attorney appointed and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court. The Clerk of Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judicial Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding district judge or magistrate judge.

5/8/06